

2005 DRAFTING REQUEST

Bill

Received: **01/19/2005**

Received By: **mglass**

Wanted: **As time permits**

Identical to LRB:

For: **Mark Gottlieb (608) 267-2369**

By/Representing: **himself**

This file may be shown to any legislator: **NO**

Drafter: **mglass**

May Contact:

Addl. Drafters:

Subject: **Buildings/Safety - clean ind air**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Gottlieb@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Changes to clean indoor air law

Instructions:

See Attached

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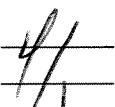
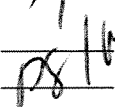
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FE Sent For:

<END>



MARK GOTTLIEB

STATE REPRESENTATIVE • 60TH DISTRICT

January 18, 2005

A handwritten signature "Darcy" in cursive, enclosed within a hand-drawn circle.

To: Legislative Reference Bureau-Bill Drafting

From: Representative Mark Gottlieb

Re: Bill Draft Request

Attached please find a copy of chapter 101.123 of the statutes. I have made a number of changes to this section that I would like to have drafted as a bill.

Also, please use the attached Florida Law ("386.203 Definitions"), which should be used when defining "enclosed indoor workplaces" in place of the fifth regulated place of "offices."

If you have any questions regarding this request, please feel free to contact my office

101.123 REGULATION OF INDUSTRY, BUILDINGS AND SAFETY

dence and where support services, including meals from a common kitchen, are available to residents.

(h) "Smoking" means carrying a lighted cigar, cigarette, pipe or any other lighted smoking equipment.

(i) "State institution" means a prison, a mental health institute as defined in s. 51.01 (12) or a center for the developmentally disabled as defined in s. 51.01 (3).

(j) "Type 1 secured correctional facility" has the meaning given in s. 938.02 (19).

(2) REGULATION OF SMOKING. (a) Except as provided in sub. (3), no person may smoke in the following places:

1. Public conveyances.
2. Educational facilities.
3. Inpatient health care facilities.
4. Indoor movie theaters.
5. ~~Offices.~~ Enclosed indoor workplaces
6. Passenger elevators.
7. Restaurants.
8. Retail establishments.
9. Public waiting rooms.
10. Any enclosed, indoor area of a state, county, city, village or town building.

(am) 1. Notwithstanding par. (a) and sub. (3) and except as provided in subd. 2., no person may smoke in a motor bus, in a hospital or in a physician's office.

2. Notwithstanding subd. 1., a person who is an adult patient of a hospital or unit of a hospital that has as its primary purpose the care and treatment of mental illness, alcoholism or drug abuse and who has the written permission of a physician may smoke in a room that is designated as a smoking area under sub. (4) (a) 2.

(ar) Notwithstanding par. (a) and sub. (3), no person may smoke in the state capitol building or in the immediate vicinity of the state capitol.

(b) The prohibition in pars. (a) and (am) 1. applies only to enclosed, indoor areas.

(bm) Notwithstanding par. (a) and sub. (3), no person may smoke on the premises, indoors or outdoors, of a day care center when children who are receiving day care services are present.

(br) Notwithstanding par. (a) and sub. (3), no person may smoke in any enclosed, indoor area of a Type 1 secured correctional facility or on the grounds of a Type 1 secured correctional facility.

(bv) Notwithstanding par. (a) and sub. (3), no person may smoke in a residence hall or dormitory that is owned or operated by the Board of Regents of the University of Wisconsin System or in any location that is 25 feet or less from such a residence hall or dormitory.

(c) This section does not limit the authority of any county, city, village or town to enact ordinances or of any school district to adopt policies that, complying with the purpose of this section, protect the health and comfort of the public.

(3) EXCEPTIONS. The regulation of smoking in sub. (2) (a) does not apply to the following places:

- (a) Areas designated smoking areas under sub. (4).
- (b) ~~Rooms in which the main occupants are smokers, even if nonsmokers are periodically present in the office or room.~~
- (c) Entire rooms or halls used for private functions, if the arrangements for the function are under the control of the sponsor of the function.
- (d) Restaurants holding a "Class B" intoxicating liquor or Class "B" fermented malt beverage license if the sale of intoxicating liquors or fermented malt beverages or both accounts for more than 50% of the restaurant's receipts.
- (f) ~~Any area of a facility used principally to manufacture or assemble goods, products or merchandise for sale.~~

(gg) A Type 2 secured correctional facility, as defined in s. 938.02 (20).

(gm) The correctional institution under s. 301.046 (1) if the institution is the prisoner's place of residence.

(gr) A Type 2 prison, as defined in s. 301.01 (6).

(4) DESIGNATION OF SMOKING AREAS. (a) 1. ~~Except as provided in subd. 2., a person in charge or his or her agent may designate smoking areas in the places where smoking is regulated under sub. (2) (a) unless a fire marshal, law, ordinance or resolution prohibits smoking:~~ Following

2. ~~A person in charge or his or her agent may not designate an entire building as a smoking area or designate any smoking areas in the state capitol building, in the immediate vicinity of the state capitol, in a Type 1 secured correctional facility, on the grounds of a Type 1 secured correctional facility, in a motor bus, hospital, or physician's office or on the premises, indoors or outdoors, of a day care center when children who are receiving day care services are present, in a residence hall or dormitory that is owned or operated by the Board of Regents of the University of Wisconsin System or in any location that is 25 feet or less from such a residence hall or dormitory, except that in a hospital or a unit of a hospital that has as its primary purpose the care and treatment of mental illness, alcoholism, or drug abuse a person in charge or his or her agent may designate one or more enclosed rooms with outside ventilation as smoking areas for the use of adult patients who have the written permission of a physician. Subject to this subdivision and sub. (3) (b), a person in charge or his or her agent may not designate an entire room as a smoking area.~~

3. This paragraph does not apply to places described in par. (am).

(am) 1. [The secretary of health and family services or his or her designee may designate areas where smoking is permitted in a state institution other than a prison, unless a fire marshal, law or resolution prohibits smoking in the area. The secretary of corrections or his or her designee may designate areas where smoking is permitted in a prison, unless a fire marshal, law or resolution prohibits smoking in the area. Either secretary or his or her designee may designate an entire room as a smoking area in a state institution administered by the secretary's department.]

2. [A person in charge of a jail or lockup facility, or his or her agent, may designate areas where smoking is permitted in the jail or lockup facility, unless a fire marshal, law or resolution prohibits smoking in the area. The person in charge or his or her agent may designate an entire room in the jail or lockup facility as a smoking area.]

3. Except in a prison, jail, or lockup facility, an entire building may not be designated as a smoking area.

(b) The person in charge or his or her agent shall post notice of the designation of a smoking area in or near the area designated. If an entire room is designated a smoking area, the person in charge or his or her agent shall post notice of the designation conspicuously on or near all entrances to the room normally used by the public. This paragraph does not apply to a place described in par. (bm).

(bm) The person in charge of a state institution, jail or lockup facility, or his or her agent, shall post notice of the designation of a smoking area under par. (am) in or near the area designated. If an entire room is designated a smoking area, the person in charge or his or her agent shall post notice of the designation conspicuously on or near all normally used entrances to the room. If an entire building in a prison, jail, or lockup facility is designated a smoking area, the person in charge, or his or her agent, shall post notice of the designation on or near all normally used entrances to the building, but need not post notice of the designation on or near entrances to rooms within the building.

(c) The person in charge or his or her agent shall utilize, if possible, existing physical barriers and ventilation systems when des-

386.2125 Rulemaking.

386.201 Popular name.--This part may be cited by the popular name the "Florida Clean Indoor Air Act."

History.--s. 1, ch. 85-257; s. 1, ch. 92-185; s. 1, ch. 2003-398.

386.202 Legislative intent.--The purpose of this part is to protect people from the health hazards of secondhand tobacco smoke and to implement the Florida health initiative in s. 20, Art. X of the State Constitution. It is the intent of the Legislature to not inhibit, or otherwise obstruct, medical or scientific research or smoking cessation programs approved by the Department of Health.

History.--s. 2, ch. 85-257; s. 2, ch. 92-185; s. 2, ch. 2003-398.

386.203 Definitions.--As used in this part:

(1) "Commercial" use of a private residence means any time during which the owner, lessee, or other person occupying or controlling the use of the private residence is furnishing in the private residence, or causing or allowing to be furnished in the private residence, child care, adult care, or health care, or any combination thereof, and receiving or expecting to receive compensation therefor.

(2) "Common area" means a hallway, corridor, lobby, aisle, water fountain area, restroom, stairwell, entryway, or conference room in a customs area of an airport terminal under the authority and control of the Bureau of Customs and Border Protection of the United States Department of Homeland Security.

(3) "Department" means the Department of Health.

(4) "Designated smoking guest rooms at public lodging establishments" means the sleeping rooms and directly associated private areas, such as bathrooms, living rooms, and kitchen areas, if any, rented to guests for their exclusive transient occupancy in public lodging establishments, including hotels, motels, resort condominiums, transient apartments, transient lodging establishments, rooming houses, boarding houses, resort dwellings, bed and breakfast inns, and the like; and designated by the person or persons having management authority over such public lodging establishment as rooms in which smoking may be permitted.

(5) "Enclosed indoor workplace" means any place where one or more persons engages in work, and which place is predominantly or totally bounded on all sides and above by physical barriers, regardless of whether such barriers consist of or include, without limitation, uncovered openings; screened or otherwise partially covered openings; or open or closed windows, жалousies, doors, or the like. A place is "predominantly" bounded by physical barriers during any time when both of the following conditions exist:

(a) It is more than 50 percent covered from above by a physical barrier that excludes rain, and

(b) More than 50 percent of the combined surface area of its sides is covered by closed physical barriers. In calculating the percentage of side surface area covered by closed physical barriers, all solid surfaces that block air flow, except railings, must be considered as closed physical barriers. This section applies to all such enclosed indoor workplaces and enclosed parts thereof without regard to whether work is occurring at any given time.

(c) The term does not include any facility owned or leased by and used exclusively for

noncommercial activities performed by the members and guests of a membership association, including social gatherings, meetings, dining, and dances, if no person or persons are engaged in work as defined in subsection (12).

(6) "Essential services" means those services that are essential to the maintenance of any enclosed indoor room, including, but not limited to, janitorial services, repairs, or renovations.

(7) "Physical barrier" includes an uncovered opening; a screened or otherwise partially covered opening; or an open or closed window, jalousie, or door.

(8) "Retail tobacco shop" means any enclosed indoor workplace dedicated to or predominantly for the retail sale of tobacco, tobacco products, and accessories for such products, in which the sale of other products or services is merely incidental. Any enclosed indoor workplace of a business that manufactures, imports, or distributes tobacco products or of a tobacco leaf dealer is a business dedicated to or predominantly for the retail sale of tobacco and tobacco products when, as a necessary and integral part of the process of making, manufacturing, importing, or distributing a tobacco product for the eventual retail sale of such tobacco or tobacco product, tobacco is heated, burned, or smoked or a lighted tobacco product is tested.

(9) "Secondhand smoke," also known as environmental tobacco smoke (ETS), means smoke emitted from lighted, smoldering, or burning tobacco when the smoker is not inhaling; smoke emitted at the mouthpiece during puff drawing; and smoke exhaled by the smoker.

(10) "Smoking" means inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product.

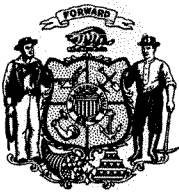
(11) "Stand-alone bar" means any licensed premises devoted during any time of operation predominantly or totally to serving alcoholic beverages, intoxicating beverages, or intoxicating liquors, or any combination thereof, for consumption on the licensed premises; in which the serving of food, if any, is merely incidental to the consumption of any such beverage; and the licensed premises is not located within, and does not share any common entryway or common indoor area with, any other enclosed indoor workplace, including any business for which the sale of food or any other product or service is more than an incidental source of gross revenue. A place of business constitutes a stand-alone bar in which the service of food is merely incidental in accordance with this subsection if the licensed premises derives no more than 10 percent of its gross revenue from the sale of food consumed on the licensed premises.

(12) "Work" means any person's providing any employment or employment-type service for or at the request of another individual or individuals or any public or private entity, whether for compensation or not, whether full or part time, whether legally or not. "Work" includes, without limitation, any such service performed by an employee, independent contractor, agent, partner, proprietor, manager, officer, director, apprentice, trainee, associate, servant, volunteer, and the like. The term does not include noncommercial activities performed by members of a membership association.

(13) "Membership association" means a charitable, nonprofit, or veterans' organization that holds a current exemption under s. 501(c)(3), (4), (7), (8), (10), or (19) or s. 501(d) of the Internal Revenue Code.

History.--s. 3, ch. 85-257; s. 1, ch. 88-266; s. 3, ch. 92-185; s. 42, ch. 94-218; s. 78, ch. 97-101; s. 2, ch. 2000-185; s. 3, ch. 2003-398.

386.204 Prohibition.--A person may not smoke in an enclosed indoor workplace, except as otherwise provided in s. 386.2045.



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1764/2 PL

MGG: /:....

WLJ

soon

O-N (in 2/17/05)

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Lps:
Please
check
spacing.

Gen

1 AN ACT ...; relating to: designated smoking areas in places where smoking is
2 generally prohibited.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 101.123 (1) (a) of the statutes is renumbered 101.123 (1) (ag).

4 SECTION 2. 101.123 (1) (aj) of the statutes is created to read:

5 101.123 (1) (aj) "Enclosed indoor workplace" means.....

6 SECTION 3. 101.123 (1) (c) of the statutes is repealed.

7 SECTION 4. 101.123 (2) (a) 5. of the statutes is repealed and recreated to read:

8 101.123 (2) (a) 5. Enclosed indoor workplaces.

9 SECTION 5. 101.123 (2) (am) 2. of the statutes is amended to read:

10 101.123 (2) (am) 2. Notwithstanding subd. 1., a person who is an adult patient
11 of a hospital or unit of a hospital that has as its primary purpose the care and

1 treatment of mental illness, alcoholism or drug abuse and who has the written
2 permission of a physician may smoke in a room that is designated as a smoking area
3 under sub. (4) (a) 2. ✓

History: 1983 a. 211; 1985 a. 332 s. 253; 1987 a. 161 s. 13m; 1987 a. 403 s. 256; 1989 a. 97, 107, 251, 336; 1991 a. 28, 39, 130; 1993 a. 27, 313; 1995 a. 27 ss. 3661, 9126 (19); 1995 a. 77, 201, 404; 1999 a. 9, 72; 2001 a. 16; 2003 a. 268. ✓

4 **SECTION 6.** 101.123 (3) (intro.) of the statutes is amended to read:

5 101.123 (3) EXCEPTIONS. (intro.) The regulation of smoking in sub. (2) (a) does
6 not apply to any of the following places:

History: 1983 a. 211; 1985 a. 332 s. 253; 1987 a. 161 s. 13m; 1987 a. 403 s. 256; 1989 a. 97, 107, 251, 336; 1991 a. 28, 39, 130; 1993 a. 27, 313; 1995 a. 27 ss. 3661, 9126 (19); 1995 a. 77, 201, 404; 1999 a. 9, 72; 2001 a. 16; 2003 a. 268. ✓

7 **SECTION 7.** 101.123 (3) (a) of the statutes is repealed.

8 **SECTION 8.** 101.123 (3) (b) of the statutes is repealed.

9 **SECTION 9.** 101.123 (4) (a) 1. of the statutes is repealed.

10 **SECTION 10.** 101.123 (4) (a) 2. of the statutes is renumbered 101.123 (4) (a) and
11 amended to read:

12 101.123 (4) (a) Hospitals. A person in charge of a hospital or his or her agent
13 may not designate ~~an entire building as a smoking area or designate any smoking~~
14 ~~areas in the state capitol building, in the immediate vicinity of the state capitol, in~~
15 ~~a Type 1 secured correctional facility, on the grounds of a Type 1 secured correctional~~
16 ~~facility, in a motor bus, hospital, or physician's office or on the premises, indoors or~~
17 ~~outdoors, of a day care center when children who are receiving day care services are~~
18 ~~present, in a residence hall or dormitory that is owned or operated by the Board of~~
19 ~~Regents of the University of Wisconsin System or in any location that is 25 feet or~~
20 ~~less from such a residence hall or dormitory, except that in~~ ^{Plain} a hospital or a unit of a
21 hospital that has as its primary purpose the care and treatment of mental illness,
22 alcoholism, or drug abuse a person in charge or his or her agent may designate a
23 portion of one or more enclosed rooms with outside ventilation as ~~smoking areas for~~

the use of adult patients who have the written permission of a physician for the
 purposes of allowing smoking as specified in sub (2) (am) 2. Subject to this
 subdivision and sub. (3) (b), a person in charge or his or her agent may not designate
 an entire room as a smoking area.

History: 1983 a. 211; 1985 a. 332 s. 253; 1987 a. 161 s. 13m; 1987 a. 403 s. 256; 1989 a. 97, 107, 251, 336; 1991 a. 28, 39, 130; 1993 a. 27, 313; 1995 a. 27 ss. 3661, 9126 (19); 1995 a. 77, 201, 404; 1999 a. 9, 72; 2001 a. 16; 2003 a. 268.

SECTION 11. 101.123 (4) (a) 3. of the statutes is repealed.

SECTION 12. 101.123 (4) (am) 1. of the statutes is renumbered 101.123 (4) (aw) and amended to read:

101.123 (4) (aw) State institutions. The secretary of health and family services or his or her designee agent may designate areas where smoking is permitted in a state institution other than a prison, unless a fire marshal, law or resolution prohibits smoking in the area. The secretary of corrections or his or her designee agent may designate areas where smoking is permitted in a prison, unless a fire marshal, law or resolution prohibits smoking in the area. Either secretary or his or her designee agent may designate an entire room as a smoking area in a state institution administered by the secretary's department. The secretary of corrections or his or her designee agent may designate an entire building in the prison as a smoking area.

History: 1983 a. 211; 1985 a. 332 s. 253; 1987 a. 161 s. 13m; 1987 a. 403 s. 256; 1989 a. 97, 107, 251, 336; 1991 a. 28, 39, 130; 1993 a. 27, 313; 1995 a. 27 ss. 3661, 9126 (19); 1995 a. 77, 201, 404; 1999 a. 9, 72; 2001 a. 16; 2003 a. 268.

SECTION 13. 101.123 (4) (am) 2. of the statutes is renumbered 101.123 (4) (ar) and amended to read:

101.123 (4) (ar) Jails; lockup facilities. A person in charge of a jail or lockup facility, or his or her agent, may designate areas where smoking is permitted in the jail or lockup facility, unless a fire marshal, law or resolution prohibits smoking in

1 ~~the area.~~ The person in charge or his or her agent may designate an entire room or
2 building in the jail or lockup facility as a smoking area.

History: 1983 a. 211; 1985 a. 332 s. 253; 1987 a. 161 s. 13m; 1987 a. 403 s. 256; 1989 a. 97, 107, 251, 336; 1991 a. 28, 39, 130; 1993 a. 27, 313; 1995 a. 27 ss. 3661, 9126 (19); 1995 a. 77, 201, 404; 1999 a. 9, 72; 2001 a. 16; 2003 a. 268.

3 SECTION 14. 101.123 (4) (am) 3. of the statutes is repealed.

4 SECTION 15. 101.123 (4) (aw) of the statutes is created to read:

5 101.123 (4) (aw) *Fire laws.* No person may designate an area where smoking
6 is permitted if a fire marshal, law, or resolution prohibits smoking that area.

7 SECTION 16. 101.123 (4) (b) and (bm) of the statutes are consolidated,
8 renumbered 101.123 (4) (b) and amended to read:

9 101.123 (4) (b) Posting. The person in charge authorized to designate a
10 smoking area under par. (a), (ar), or (aw), or his or her agent, shall post notice of the
11 designation of a smoking area in or near the area designated. If an entire room is
12 designated a smoking area, the person in charge so authorized, or his or her agent,
13 shall post notice of the designation conspicuously on or near all entrances to the room
14 normally used by the public. ~~This paragraph does not apply to a place described in~~
15 ~~par. (bm).~~

16 ~~(bm) The person in charge of a state institution, jail or lockup facility or his or~~
17 ~~her agent, shall post notice of the designation of a smoking area under par. (am) in~~
18 ~~or near the area designated. If an entire room is designated a smoking area, the~~
19 ~~person in charge or his or her agent shall post notice of the designation conspicuously~~
20 ~~on or near all normally used entrances to the room. If an entire building in a prison,~~
21 ~~jail, or lockup facility is designated a smoking area, the person in charge so~~
22 authorized, or his or her agent, shall post notice of the designation on or near all

- 1 normally used entrances to the building, but need not post notice of the designation
2 on or near entrances to rooms within the building.

History: 1983 a. 211; 1985 a. 332 s. 253; 1987 a. 161 s. 13m; 1987 a. 403 s. 256; 1989 a. 97, 107, 251, 336; 1991 a. 28, 39, 130; 1993 a. 27, 313; 1995 a. 27 ss. 3661, 9126 (19); 1995 a. 77, 201, 404; 1999 a. 9, 72; 2001 a. 16; 2003 a. 268.

- 3 **SECTION 17.** 101.123 (4) (c) of the statutes is amended to read:

- 4 101.123 (4) (c) Barriers; ventilation. The person in-charge authorized to
5 designate a smoking area under pars. (a), (ar), or (aw), or his or her agent, shall
6 utilize, if possible, existing physical barriers and ventilation systems when
7 designating smoking areas. This paragraph requires no new construction of physical
8 barriers or ventilation systems in any building.

History: 1983 a. 211; 1985 a. 332 s. 253; 1987 a. 161 s. 13m; 1987 a. 403 s. 256; 1989 a. 97, 107, 251, 336; 1991 a. 28, 39, 130; 1993 a. 27, 313; 1995 a. 27 ss. 3661, 9126 (19); 1995 a. 77, 201, 404; 1999 a. 9, 72; 2001 a. 16; 2003 a. 268.

- 9 **SECTION 18.** 101.123 (4) (d) of the statutes is amended to read:

- 10 101.123 (4) (d) Where posting required. This section requires the posting of signs
11 only in areas where smoking is permitted.

History: 1983 a. 211; 1985 a. 332 s. 253; 1987 a. 161 s. 13m; 1987 a. 403 s. 256; 1989 a. 97, 107, 251, 336; 1991 a. 28, 39, 130; 1993 a. 27, 313; 1995 a. 27 ss. 3661, 9126 (19); 1995 a. 77, 201, 404; 1999 a. 9, 72; 2001 a. 16; 2003 a. 268.

- 12 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1764/2dn

MGG:.....
WLG

✓
1. Wisconsin's Clean Indoor Air Act (s. 101.123) is difficult to follow. Before I proceed with this drafting, please review this draft carefully to make sure I understand your intent.

under ✓
Under current law, for a place ^{under} in s. 101.123 (2) (a), a "person in charge" may designate smoking area. As I understand the intent of your drafting request based on the ^a markup I received, the only place where smoking areas may be designated are in certain hospitals, prisons, certain other state institutions, jails, and lockup facilities. At all other places in s. 101.123 (2) (a) there will be no designated smoking areas, and thus no smoking, unless the place has a function hall (s. 101.123 (3) (c)) or the place ^a is in certain type of prison or correctional facility (s. 101.123 (3) (gg), (gm), or (gr)). This includes public conveyances, educational facilities (schools), and restaurants that do not meet the exception under s. 101.123 (3) (d). Is this your intent?

2. I will address the definition for enclosed indoor workplace in a redraft, ^{and} but I will also need to know what is your intent in incorporating this definition.

3. Let me know if you will want a delayed effective date.

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1764/P1dn
MGG:wlj:jf

February 23, 2005

1. Wisconsin's Clean Indoor Air Act (s. 101.123) is difficult to follow. Before I proceed with this drafting, please review this draft carefully to make sure I understand your intent.

Under current law, for a place who s. 101.123 (2) (a), a "person in charge" may designate a smoking area. As I understand the intent of your drafting request based on the markup I received, the only place where smoking areas may be designated are in certain hospitals, prisons, certain other state institutions, jails, and lockup facilities. At all other places in s. 101.123 (2) (a) there will be no designated smoking areas, and thus no smoking, unless the place has a function hall (s. 101.123 (3) (c)) or the place is a certain type of prison or correctional facility (s. 101.123 (3) (gg), (gm), or (gr)). This includes public conveyances, educational facilities (schools), and restaurants that do not meet the exception under s. 101.123 (3) (d). Is this your intent?

2. I will address the definition for enclosed indoor workplace in a redraft, and I will need to know what is your intent in incorporating this definition.

3. Let me know if you will want a delayed effective date.

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215

Gibson-Glass, Mary

From: Paulson, Darcy
Sent: Monday, February 28, 2005 10:49 AM
To: Gibson-Glass, Mary
Subject: FW: LRB 1764

Follow Up Flag: Follow up
Flag Status: Flagged

Just wanted to make sure you got this...

-----Original Message-----

From: Paulson, Darcy
Sent: Thursday, February 24, 2005 9:29 AM
To: Gibson-Glass, Mary
Subject: LRB 1764

Mary

I have a cold and barely have a voice so I hope this email can explain things from yesterday.

Under (3)(f) he lined out the exception to factories but he wants it to apply to industrial workplaces(factories) and "offices" didn't cover that so that is why he replaced it with the "enclosed indoor workplace" language.

Let me know if this is unclear and you need further explanation. Thanks

Darcy J. Paulson
Legislative Assistant
State Representative Mark Gottlieb
60th Assembly District
608.267.2369

D-N

Wed

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTIONthe prohibition against
indoor smoking

Regen

certain
certain areas that
are excepted from

1 AN ACT *to repeal* 101.123 (1) (c), 101.123 (3) (a), 101.123 (3) (b), 101.123 (4) (a)
 2 1., 101.123 (4) (a) 3. and 101.123 (4) (am) 3.; *to renumber* 101.123 (1) (a); *to*
 3 *renumber and amend* 101.123 (4) (a) 2., 101.123 (4) (am) 1. and 101.123 (4)
 4 (am) 2.; *to consolidate, renumber and amend* 101.123 (4) (b) and (bm); *to*
 5 *amend* 101.123 (2) (am) 2., 101.123 (3) (intro.), 101.123 (4) (c) and 101.123 (4)
 6 (d); *to repeal and recreate* 101.123 (2) (a) 5.; and *to create* 101.123 (1) (aj)
 7 and 101.123 (4) (aw) of the statutes; **relating to:** designated smoking areas in
 8 places where smoking is generally prohibited *and*

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version. ✓

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

ANALY
315

9 SECTION 1. 101.123 (1) (a) of the statutes is renumbered 101.123 (1) (ag).
 10 SECTION 2. 101.123 (1) (aj) of the statutes is created to read:

(am) (b) 101.123 (1) (a) "Enclosed indoor workplace" means *any indoor location where a person performs a work-related duty in the course of his or her profession, trade, or occupation or process of manufacture, except a personal residence.*

SECTION 3. 101.123 (1) (c) of the statutes is repealed.

SECTION 4. 101.123 (2) (a) 5. of the statutes is repealed and recreated to read:

101.123 (2) (a) 5. Enclosed indoor workplaces.

SECTION 5. 101.123 (2) (am) 2. of the statutes is amended to read:

101.123 (2) (am) 2. Notwithstanding subd. 1., a person who is an adult patient of a hospital or unit of a hospital that has as its primary purpose the care and treatment of mental illness, alcoholism or drug abuse and who has the written permission of a physician may smoke in a room that is designated as a smoking area under sub. (4) (a) 2.

SECTION 6. 101.123 (3) (intro.) of the statutes is amended to read:

101.123 (3) EXCEPTIONS. (intro.) The regulation of smoking in sub. (2) (a) does not apply to any of the following places:

~~SECTION 7. 101.123 (3) (a) of the statutes is repealed.~~

SECTION 8. 101.123 (3) (b) of the statutes is repealed.

SECTION 9. 101.123 (4) (a) 1. of the statutes is repealed.

SECTION 10. 101.123 (4) (a) 2. of the statutes is renumbered 101.123 (4) (a) and amended to read:

101.123 (4) (a) Hospitals. A person in charge of a hospital or his or her agent may not designate an entire building as a smoking area or designate any smoking areas in the state capitol building, in the immediate vicinity of the state capitol, in a Type 1 secured correctional facility, on the grounds of a Type 1 secured correctional facility, in a motor bus, hospital, or physician's office or on the premises, indoors or outdoors, of a day care center when children who are receiving day care services are present, in a residence hall or dormitory that is owned or operated by the Board of

1 ~~Regents of the University of Wisconsin System or in any location that is 25 feet or~~
2 ~~less from such a residence hall or dormitory, except that in a hospital or a unit of a~~
3 ~~hospital that has as its primary purpose the care and treatment of mental illness,~~
4 ~~alcoholism, or drug abuse a person in charge or his or her agent may designate a~~
5 ~~portion of one or more enclosed rooms with outside ventilation as smoking areas for~~
6 ~~the use of adult patients who have the written permission of a physician. Subject to~~
7 ~~this subdivision and sub. (3) (b), a person in charge or his or her agent may not~~
8 ~~designate an entire room as a smoking area for the purpose of allowing smoking as~~
9 ~~specified in sub. (2) (am) 2.~~

10 SECTION 11. 101.123 (4) (a) 3. of the statutes is repealed.

11 SECTION 12. 101.123 (4) (am) 1. of the statutes is renumbered 101.123 (4) (as)
12 and amended to read:

13 101.123 (4) (as) State institutions. The secretary of health and family services
14 or his or her designee agent may designate areas where smoking is permitted in a
15 state institution other than a prison, ~~unless a fire marshal, law or resolution~~
16 ~~prohibits smoking in the area.~~ The secretary of corrections or his or her designee
17 agent may designate areas where smoking is permitted in a prison, ~~unless a fire~~
18 ~~marshal, law or resolution prohibits smoking in the area.~~ Either secretary or his or
19 her designee agent may designate an entire room as a smoking area in a state
20 institution administered by the secretary's department. The secretary of corrections
21 or his or her agent may designate an entire building in the prison as a smoking area.

22 SECTION 13. 101.123 (4) (am) 2. of the statutes is renumbered 101.123 (4) (ar)
23 and amended to read:

24 101.123 (4) (ar) Jails; lockup facilities. A person in charge of a jail or lockup
25 facility, or his or her agent, may designate areas where smoking is permitted in the

1 jail or lockup facility, ~~unless a fire marshal, law or resolution prohibits smoking in~~
2 ~~the area.~~ The person in charge or his or her agent may designate an entire room ~~or~~
3 ~~building~~ in the jail or lockup facility as a smoking area.

4 ~~SECTION 14. 101.123 (4) (am) 3. of the statutes is repealed.~~

5 SECTION 15. 101.123 (4) (aw) of the statutes is created to read:

6 101.123 (4) (aw) *Fire laws.* No person may designate an area where smoking
7 is permitted if a fire marshal, law, or resolution prohibits smoking that area.

8 SECTION 16. 101.123 (4) (b) and (bm) of the statutes are consolidated,
9 renumbered 101.123 (4) (b) and amended to read:

10 101.123 (4) (b) *Posting.* The person ~~in charge~~ authorized to designate a
11 smoking area under par. (a), (ar), or (as), or his or her agent, shall post notice of the
12 designation of a smoking area in or near the area designated. If an entire room is
13 designated a smoking area, the person ~~in charge~~ so authorized, or his or her agent,
14 shall post notice of the designation conspicuously on or near all entrances to the room
15 normally used by the public. ~~This paragraph does not apply to a place described in~~
16 ~~par. (bm). (bm) The person in charge of a state institution, jail or lockup facility or~~
17 ~~his or her agent, shall post notice of the designation of a smoking area under par. (am)~~
18 ~~in or near the area designated. If an entire room is designated a smoking area, the~~
19 ~~person in charge or his or her agent shall post notice of the designation conspicuously~~
20 ~~on or near all normally used entrances to the room. If an entire building in a prison,~~
21 ~~jail, or lockup facility is designated a smoking area, the person in charge~~ so
22 authorized, or his or her agent, shall post notice of the designation on or near all
23 normally used entrances to the building, but need not post notice of the designation
24 on or near entrances to rooms within the building.

25 SECTION 17. 101.123 (4) (c) of the statutes is amended to read:

101.123 (4) (c) Barriers; ventilation. The person in-charge authorized to designate a smoking area under par. (a), (ar), or (as), or his or her agent, shall utilize, if possible, existing physical barriers and ventilation systems when designating smoking areas. This paragraph requires no new construction of physical barriers or ventilation systems in any building.

SECTION 18. 101.123 (4) (d) of the statutes is amended to read:

101.123 (4) (d) Where posting required. This section requires the posting of signs only in areas where smoking is permitted. _____ INSERT 5

(END)

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1764/lins
MGG:.....

*Ins
Analysis*

Current law prohibits smoking in most enclosed, indoor locations that are accessible to the public unless there has been a specific area that has been designated a smoking area. This bill limits the areas where any smoking areas may be designated to hospitals where the primary purpose is for treatment of mental illness, alcoholism, or drug abuse; mental health institutions; centers for the developmentally disabled; prisons; and jails. The locations where smoking areas may no longer be designated under the bill include the following:

1. Public conveyances such as mass transit vehicles and school buses.
2. Schools and other educational facilities.
3. Inpatient health care facilities such as community^o based residential facilities and licensed nursing homes.
4. Movie theaters.
5. Offices and other places of employment, as described below.
6. Restaurants that have seating capacities of more than 50 persons, except as described below.
7. Retail establishments other than bars and bowling centers.
- ✱ 8. Public waiting rooms^o
9. County, city, village, state, and town buildings.

Current law provides exceptions from the prohibition against smoking for rooms in which the main occupants are smokers and for areas of facilities that are used to manufacture or assemble goods, products, or merchandise. This bill eliminates these exceptions. This bill also expands the concept of "offices" under current law to include indoor workplaces. The bill defines an "indoor workplace" to be any indoor location where a person performs a work-related duty, except for a personal residence. ✱

Current law also allows smoking in any restaurant holding aⁿ intoxicating liquor license or beer license issued by a municipality if the sale of alcoholic beverages subject to the license accounts for more than 50 percent of the restaurant's receipts. The bill increases this percentage to 75 percent. ✓

Insert 2-15

SECTION 1. 101.123 (3) (d) of the statutes is amended to read:

101.123 (3) (d) Restaurants holding a "Class B" intoxicating liquor or Class "B" fermented malt beverage license if the sale of intoxicating liquors or fermented malt beverages or both accounts for more than 50% ^{percent} 75% of the restaurant's receipts.

History: 1983 a. 211; 1985 a. 332 s. 253; 1987 a. 161 s. 13m; 1987 a. 403 s. 256; 1989 a. 97, 107, 251, 336; 1991 a. 28, 39, 130; 1993 a. 27, 313; 1995 a. 27 ss. 3661, 9126 (19); 1995 a. 77, 201, 404; 1999 a. 9, 72; 2001 a. 16; 2003 a. 268.

SECTION 2. 101.123 (3) (f) of the statutes is repealed.

Insert 5-8

SECTION 3. Effective date.

(1) This act takes effect on the first day of the 7th month beginning after publication.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1764/1dn

MGG:1:....

WJ

Please review this draft carefully to ensure that it is consistent with your intent.

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1764/P1dn
MGG:wlj:jf

February 23, 2005

1. Wisconsin's Clean Indoor Air Act (s. 101.123) is difficult to follow. Before I proceed with this drafting, please review this draft carefully to make sure I understand your intent.

Under current law, for a place who s. 101.123 (2) (a), a "person in charge" may designate a smoking area. As I understand the intent of your drafting request based on the markup I received, the only place where smoking areas may be designated are in certain hospitals, prisons, certain other state institutions, jails, and lockup facilities. At all other places in s. 101.123 (2) (a) there will be no designated smoking areas, and thus no smoking, unless the place has a function hall (s. 101.123 (3) (c)) or the place is a certain type of prison or correctional facility (s. 101.123 (3) (gg), (gm), or (gr)). This includes public conveyances, educational facilities (schools), and restaurants that do not meet the exception under s. 101.123 (3) (d). Is this your intent?

2. I will address the definition for enclosed indoor workplace in a redraft, and I will need to know what is your intent in incorporating this definition.

3. Let me know if you will want a delayed effective date.

1 yr.

50%-
75%

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1764/1dn

MGG:wlj:jf

March 16, 2005

Please review this draft carefully to ensure that it is consistent with your intent.

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215

Gibson-Glass, Mary

From: Gottlieb, Mark
Sent: Thursday, March 17, 2005 4:39 PM
To: Gibson-Glass, Mary
Subject: LRB 1764

Hi,

1. Here is the definition I mentioned:

"Place of Employment" means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.

2. Other changes:

- a. In 101.123(1)(f) please delete "with a seating capacity of more than 50 persons"
- b. In 101.123(1)(g) please delete ", and except bowling centers"
- d. In 101.123(a)(ar) change the definition of immediate vicinity to be "within 25 feet of the state capitol"

Thanks.

*restaurants
bowling alleys
~~be~~ place of employ
capitol*